



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2017-0212; FRL-9989-23-Region 5]

**Air Plan Approval; Wisconsin; Reasonable Further Progress Plan
and other Plan Elements for the Moderate Nonattainment Chicago
Area for the 2008 Ozone Standards**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing approval of a revision to the Wisconsin State Implementation Plan (SIP) to meet the base year emissions inventory, reasonable further progress (RFP), RFP contingency measure, nitrogen oxides (NO_x) reasonably available control technology (RACT), and motor vehicle inspection and maintenance (I/M) requirements of the Clean Air Act (CAA) for the Wisconsin portion of the Chicago-Naperville, Illinois-Indiana-Wisconsin nonattainment area (Chicago area) for the 2008 ozone National Ambient Air Quality Standards (NAAQS or standards). EPA is also finalizing approval of the 2017 and 2018 transportation conformity motor vehicle emissions budgets (MVEBs) for the Wisconsin portion of the Chicago area for the 2008 ozone NAAQS. EPA proposed approval of these attainment planning elements on August 16, 2018, and received no adverse comments germane to

this action. Therefore, EPA is finalizing approval of this SIP revision pursuant to section 110 and part D of the CAA and EPA's regulations because it satisfies the emission inventory, RFP, RFP contingency measure, NO_x RACT, I/M, and transportation conformity requirements for the Wisconsin portion of the Chicago area, which is classified as moderate nonattainment for the 2008 ozone NAAQS.

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2017-0212. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through www.regulations.gov or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Jenny Liljegren,

Physical Scientist, at (312) 886-6832 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Jenny Liljegren, Physical Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6832, Liljegren.Jennifer@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What Is the Background for this Action?

II. What Action Is EPA Taking?

III. Statutory and Executive Order Reviews

I. What Is the Background for this Action?

A. Background on the 2008 Ozone NAAQS

On March 27, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm).¹ Promulgation of a revised NAAQS triggers a requirement for EPA to designate areas of the country as nonattainment, attainment, or unclassifiable for the standards. For the ozone NAAQS, this also involves classifying any nonattainment areas at the time of designation.² Ozone nonattainment areas are classified based on the severity

¹73 FR 16436.

²CAA sections 107(d)(1) and 181(a)(1).

of their ozone levels (as determined based on the area's "design value," which represents air quality in the area for the most recent three years). The classifications for ozone nonattainment areas are marginal, moderate, serious, severe, and extreme.³

Areas that EPA designates nonattainment for the ozone NAAQS are subject to certain requirements, including the general nonattainment area planning requirements of CAA section 172 and the ozone-specific nonattainment planning requirements of CAA section 182. Ozone nonattainment areas in the lower classification levels have fewer and/or less stringent mandatory air quality planning and control requirements than those in higher classifications. For marginal areas, a state is required to submit a baseline emissions inventory, adopt provisions into the SIP requiring emissions statements from stationary sources in the area, and implement a nonattainment new source review (NSR) program for the relevant ozone NAAQS.⁴ For moderate areas, a state needs to comply with the marginal area requirements, plus additional moderate area requirements, including the requirement to submit a modeled demonstration that the area will attain the NAAQS as expeditiously as practicable but no later than six years after designation, the requirement to submit an

³CAA section 181(a)(1).

⁴CAA section 182(a).

RFP plan, the requirement to adopt and implement certain emissions controls, such as RACT and I/M, and the requirement for greater emissions offsets for new or modified major stationary sources under the state's nonattainment NSR program.⁵

B. Background on the Chicago 2008 Ozone Nonattainment Area

On June 11, 2012,⁶ EPA designated the Chicago area as a marginal nonattainment area for the 2008 ozone NAAQS. The Chicago area includes Cook, DuPage, Kane, Lake, McHenry, and Will Counties and part of Grundy and Kendall Counties in Illinois; Lake and Porter Counties in Indiana; and the eastern portion of Kenosha County in Wisconsin. On May 4, 2016,⁷ pursuant to section 181(b)(2) of the CAA, EPA determined that the Chicago area failed to attain the 2008 ozone NAAQS by the July 20, 2015, marginal area attainment deadline and thus reclassified the area from marginal to moderate nonattainment. In that action, EPA established January 1, 2017, as the due date for all moderate area nonattainment plan SIP requirements applicable to newly reclassified areas.

II. What Action Is EPA Taking?

As explained in the proposed rulemaking,⁸ EPA is approving revisions to Wisconsin's SIP pursuant to section 110 and part D

⁵CAA section 182(b).

⁶77 FR 34221, effective July 20, 2012.

⁷81 FR 26697.

⁸83 FR 40715 (August 16, 2018).

of the CAA and EPA's regulations. Wisconsin's April 17, 2017, submission and January 23, 2018, supplement along with a prior submission made on August 15, 2016, satisfy the emission inventory, RFP, RFP contingency measure, NO_x RACT, emissions statement, I/M, and transportation conformity requirements for the Wisconsin portion of the Chicago area for the 2008 ozone NAAQS.

III. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally

permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court

of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: December 20, 2018.

James O. Payne,
Acting Deputy Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 52.2585 is amended by adding paragraph (ff) to read as follows:

§ 52.2585 Control strategy: Ozone.

* * * * *

(ff) Approval - On April 17, 2017, as supplemented on January 23, 2018, Wisconsin submitted a revision to its State Implementation Plan along with a prior submission on August 15, 2016, to satisfy the emissions statement, emission inventory, reasonable further progress (RFP), RFP contingency measure, oxides of nitrogen (NO_x) reasonably available control technology (RACT), motor vehicle inspection and maintenance (I/M), and transportation conformity requirements for the Wisconsin portion of the Chicago area for the 2008 ozone NAAQS moderate nonattainment plan. These elements of the plan meet the requirements of section 110 and part D of the CAA for the Wisconsin portion of the Chicago area, which was reclassified on May 4, 2016, as moderate nonattainment for the 2008 ozone NAAQS. The April 17, 2017, submittal as supplemented on January 23, 2018, also established new Motor Vehicle Emissions Budgets

(MVEB) for volatile organic compounds (VOC) and NO_x for the years 2017 and 2018. The MVEBs for the Wisconsin portion of the Chicago 2008 ozone NAAQS nonattainment area, which is the portion of Kenosha County inclusive and east of Interstate 94, are now: 1.56 tons per summer day of VOC emissions and 3.05 tons per summer day of NO_x emissions for the year 2017, and 1.44 tons per summer day of VOC emissions and 2.75 tons per summer day of NO_x emissions for the year 2018.

[FR Doc. 2019-02057 Filed: 2/12/2019 8:45 am; Publication Date: 2/13/2019]